



## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

### **14 CFR Part 1240**

**[Document Number NASA-2012-0002]**

**RIN 2700-AD51**

### **Inventions and Contributions**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Direct Final Rule.

**SUMMARY:** NASA is amending its regulations to clarify and update the procedures for board recommended awards, and the procedures and requirements for recommended special initial awards, including patent application awards, software release awards, and Tech Brief awards, and to update citations and the information on the systems used for reporting inventions and issuing award payments. The revisions to this rule are part of NASA's retrospective plan under EO 13563 completed in August 2011. NASA's full plan can be accessed at:

[http://www.nasa.gov/pdf/581545main\\_Final%20Plan%20for%20Retrospective%20Analysis%20of%20Existing%20Regulations.pdf](http://www.nasa.gov/pdf/581545main_Final%20Plan%20for%20Retrospective%20Analysis%20of%20Existing%20Regulations.pdf).

**DATES:** This rule is effective [INSERT 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comment is received, NASA will publish a timely withdrawal of the rule in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Helen M. Galus, Office of the General Counsel, NASA Headquarters, telephone (202) 358-3437, fax (202) 358-4341.

**SUPPLEMENTARY INFORMATION:** Final regulations relating to Invention and Contributions Board Awards for Scientific and Technical Contributions [14 CFR Part 1240, Subpart 1], were published at 25 FR 1312 on February 13, 1960. These regulations were written under the National Aeronautics and Space Act of 1958, As Amended , 42 U.S.C. 2457(f), 2458 and 2473(b)(1) (now, National Aeronautics and Space Act, 51 U.S.C. 20135(g), 20136 and 20112 (b)(1)). This subpart prescribes the regulations for the granting of monetary awards by the NASA Administrator, for scientific and technical contributions of significant value in the conduct of aeronautical and space activities. Final amendments to these regulations were published at 67 FR 31119 on May 9, 2002, to provide definitions, add new category of initial awards for release of software, to provide initial awards for the issuance of patents based upon continuation-in-part and divisional patent applications, to increase the amount of certain awards, and to change delegations of authority from the NASA Administrator.

NASA is now again revising its regulations at 14 CFR Part 1240, Subpart 1, to clarify the eligibility requirements for certain awards and clarify that the awards are recommended by the Inventions and Contributions Board (hereinafter “the Board”), but final terms and conditions of the awards are at the discretion of the Administrator or his designee, the revisions also provide the Board more flexibility in the amount of the special awards to be recommended.

Additionally, the National Aeronautics and Space Act (hereinafter “the Space Act”), is now codified in Title 51 of the United States Code, so citations to this Act have been updated accordingly. The regulations have also been revised, in part, to make them conform closer to the terms of the Space Act, and to reflect current accounting techniques used at the Agency.

Additional revisions include rendering the terminology consistent within the regulations and the sentence structure grammatically complete and easier to understand. Finally, the revisions reflect

organizational management changes that have taken place within the agency and the respective resulting responsibilities.

### **Direct Final Rule and Significant Adverse Comments**

NASA has determined this rulemaking meets the criteria for a direct final rule because it involves clarifications, updating, and minor substantive changes to the existing regulations. NASA does not anticipate this direct final rule will result in any major changes to its current awards program. NASA expects no opposition to the changes and no significant adverse comments. However, if NASA receives a significant adverse comment, the Agency will withdraw this direct final rule by publishing a document in the Federal Register. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

### **Statutory Authority**

The Invention and Contributions Board is established under the National Aeronautics and Space Act, as amended, 51 U.S.C. 20135(g). 51 U.S.C. 20136(a) authorizes the NASA Administrator to make monetary awards to any person for any scientific or technical contribution to NASA which is determined by the Administrator to have significant value in the conduct of aeronautical and space activities. Applications for such awards are referred to the Inventions and Contributions Board which transmits to the Administrator its recommendation as to the terms of the award. The Federal Technology Transfer Act of 1986, sec. 12, 15 U.S.C. 3710b, requires, in part, the head of each Federal agency (that is making expenditures at a rate of more than

\$50,000,000 per fiscal year for research and development in its Government-operated laboratories) to use the appropriate statutory authority to develop and implement a cash awards program to reward its scientific, engineering, and technical personnel for inventions, innovations, computer software, or other outstanding scientific or technological contributions of value to the United States due to commercial application or due to contributions to missions of the Federal agency or the Federal government. Regulations setting forth the eligibility and procedures for submitting applications for monetary awards to the Administrator of NASA for scientific and technical contributions which have significant value in the conduct of aeronautical and space activities pursuant to the Space Act, and establishing an awards program consistent with the Federal Technology Transfer Act of 1986 are provided in Title 14 of the Code of Federal Regulations, Part 1240, Subpart 1.

#### **Regulatory Analysis Section:**

##### **Paperwork Reduction Act Statement**

This rule does not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

##### **Executive Order 12866 and Executive Order 13563**

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “significant regulatory action” although not

economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

### **Regulatory Flexibility Act**

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule sets forth procedures for submitting applications for monetary awards to the Administrator of NASA for scientific and technical contributions which have significant value in the conduct of aeronautical and space activities pursuant to the Space Act, and establishes the awards program consistent with the Federal Technology Transfer Act of 1986. Based on the typical recipient and number of these awards, the rule will not have a significant economic impact on a substantial number of small entities.

### **List of Subjects in 14 CFR Part 1240**

Awards, Inventions and contributions.

Accordingly, 14 CFR Part 1240 is amended as follows:

### **Part 1240—INVENTIONS AND CONTRIBUTIONS**

1. The authority citation for part 1240 is revised to read as follows:

Authority: Section 20136 of the National Aeronautics and Space Act (51 U.S.C. 20136), and the Federal Technology Transfer Act of 1986, sec. 12, 15 U.S.C. 3710b(1).

2. Section 1240.100 is revised to read as follows:

#### **§ 1240.100 Purpose.**

This subpart prescribes procedures for submitting applications for monetary awards to the Administrator of NASA for scientific and technical contributions which have significant value in

the conduct of aeronautical and space activities pursuant to 51 U.S.C. 20136, and establishes the awards program consistent with the Federal Technology Transfer Act of 1986, section 12, 15 U.S.C. 3710b(1).

3. Section 1240.101 is revised to read as follows:

**§ 1240.101 Scope.**

This subpart applies to awards for any scientific or technical contribution, whether or not patentable, which is determined by the Administrator after referral to the Inventions and Contributions Board to have significant value in the conduct of aeronautical and space activities, upon submission of an application for award to NASA, or upon the Administrator's own initiative, under 51 U.S.C. 20136.

4. Section 1240.102, paragraph (g), is revised to read as follows:

**§ 1240.102 Definitions.**

\* \* \* \* \*

(g) Innovation means a mathematical, engineering or scientific concept, idea, design, process, or product.

\* \* \* \* \*

5. Section 1240.104, paragraph (a), is revised to read as follows:

**§ 1240.104 Applications for awards.**

(a) Eligibility. Applications for award may be submitted by any person including any individual, partnership, corporation, association, institution, or other entity. An application for an award under this section is separate from application for an award under § 1240.105 and may be submitted whether or not the contribution is also eligible for an award under § 1240.105.

\* \* \* \* \*

6. Section 1240.105 is revised to read as follows:

**§ 1240.105 Special initial awards—NASA and NASA contractor employees.**

(a) Patent Application Awards. (1) When the Board receives written notice, in the manner prescribed by the Board, from the Agency Counsel for Intellectual Property or the Patent or Intellectual Property Counsel at a NASA Center that an invention made by an employee of NASA or a NASA contractor and reported to NASA in the manner prescribed by the Board is eligible for a patent application award, the Board may recommend to the Administrator or a designee that an award be made, including a specific recommended amount and distribution thereof for any multiple inventors, so long as the following eligibility conditions have been met:

(i) A nonprovisional U.S. patent application has been filed covering the invention and NASA has either an ownership interest in the invention or an irrevocable, royalty-free, license to practice the invention, or have the invention practiced for or on its behalf, throughout the world, or the invention has been assigned by NASA to a contractor under 35 U.S.C. 202(e); or

(ii) A continuation-in-part or divisional patent has been issued based on a patent application that is eligible for an award under paragraph (a)(1)(i) of this section.

(2) No additional award will be given for a continuation patent application where an award was authorized for the parent application and the parent application will be or has been abandoned. In addition, awards will not be granted for provisional applications under 35 U.S.C. 111(b) or reissue applications under 35 U.S.C. 251.

(b) Software Release Awards. (1) When the Board receives written notice, in the manner prescribed by the procedures of the Board, that a NASA Center has approved the initial (first) release to a qualified user of a software package based on a software innovation made by an employee of NASA or a NASA contractor and reported to NASA in the manner prescribed by

the procedures of the Board, the Board may recommend to the Administrator or designee that an award be made, including a specific amount and distribution thereof for any multiple innovators, so long as the following conditions have been met:

(i) NASA has either an ownership interest in the software or an irrevocable, royalty-free, license to reproduce, prepare derivative works, distribute, perform and display the software, throughout the world for governmental purposes;

(ii) The software is of commercial quality as defined in § 1240.102; and

(iii) The software has been verified to perform the functions claimed in its documentation on the platform for which it was designed without harm to the systems or data contained within.

(2) Software that is the subject of a software release award is not eligible to receive a Tech Brief award based upon the publication of an announcement of availability in “NASA Tech Briefs.”

(3) Software release awards for modifications made to software for which the innovators have already received an initial software release award will be at the discretion of the Administrator or his designee, upon recommendation by the Board.

(c) Tech Briefs Awards. When the Board receives written notice, in the manner and format prescribed by the procedures of the Board, that a NASA Center has approved for publication a NASA Tech Brief based on an innovation made by an employee of NASA or a NASA contractor and reported to NASA in the manner and form prescribed by the procedures of the Board, the Board may recommend to the Administrator or designee that an award be made, including a specific amount and distribution thereof for any multiple innovators.

(d) When a Patent Application Award, a Software Release Award, and a Tech Brief Award have been authorized for the same contribution, the awards will be cumulative.



7. Section 1240.108, paragraph (a), is revised to read as follows:

**§ 1240.108 Reconsideration.**

(a) With respect to each completed application, in those cases where the Board does not recommend an award, the applicant may, within such period as the Board may set but in no event less than 30 days from notification, request reconsideration of the Board's decision.

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8. Section 1240.110 is amended by revising the section heading, designating the existing text as paragraph (a), and adding paragraphs (b) and (c) to read as follows:

**§ 1240.110 Recommendation to, and action by, the Administrator.**

\* \* \* \* \*

(b) The granting, denying or modification of any Board recommended award under this subpart will be at the sole discretion of the Administrator or his designee, who will determine the final terms and conditions of each award after consideration of the criteria in §1240.103.

(c) In addition, the Board may recommend, and the Administrator or his designee may grant, non-monetary awards under other applicable laws and regulations.

9. Section 1240.111 is revised to read as follows:

**§ 1240.111 Release**

Under subsection 20136(c) of the National Aeronautics and Space Act, no award will be made to an applicant unless the applicant submits a duly executed release, in a form specified by the Administrator, of all claims the applicant may have to receive any compensation (other than the award recommended) from the United States Government for use of the contribution or any element thereof at any time by or on behalf of the United States, or by or on behalf of any

foreign government pursuant to any existing or future treaty or agreement with the United States, within the United States, or at any other place.

10. Section 1240.112 is revised to read as follows:

**§ 1240.112 Presentation of awards.**

(a) Written acknowledgments to employees of NASA receiving awards will be provided by the appropriate Official-in-Charge at the Headquarters Office, by the Director of the cognizant NASA Center, or by a designee.

(b) Written acknowledgments to employees of NASA contractors receiving awards will be forwarded to contractor officials for suitable presentation.

(c) Monetary awards will be paid by check or electronic funds transfer.

11. Section 1240.113 is revised to read as follows:

**§ 1240.113 Financial accounting.**

NASA shall provide for appropriate database and accounting system(s) to ensure that award payments are recorded and disbursed in an orderly fashion and in the proper amounts to proper awardees.

12. Section 1240.114 is revised to read as follows:

**§ 1240.114 Delegation of authority.**

(a) The Chairperson, Inventions and Contributions Board, is delegated authority to approve and execute grants of awards for significant scientific or technical contributions not exceeding \$2,000 per contributor, when in accordance with the recommendation of the Board and in conformity with applicable law and regulations.

(b) The Chairperson, Inventions and Contributions Board, is delegated authority to approve and execute grants of awards not exceeding \$2,000 per awardee, upon the notification that:

- (1) A Patent Application Award has been recommended by the Board pursuant to §1240.105(a);
- (2) A Software Release Award has been recommended by the Board pursuant to §1240.105(b);
- or
- (3) A Tech Briefs Award has been recommended by the Board pursuant to §1240.105(c).

Charles F. Bolden, Jr.  
Administrator

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